

CERTIFIED PROFESSIONAL GUARDIAN BOARD

FILED BY CPG BOARD

AUG 04 2008

**Lifetime Advocacy Plus,
CPGA No. 5140**

**PGB No. 2004-004 A
PGB No. 2005-014 A**

AGREEMENT REGARDING DISCIPLINE

The parties, Lifetime Advocacy Plus (LA+), CPGA No. 5140, a certified professional guardian agency, and the Certified Professional Guardian Board (Board) enter into this Agreement Regarding Discipline (Agreement) pursuant to the Board's Disciplinary Regulations for Certified Professional Guardians. LA+ has committed violations of the Standards of Practice for Certified Professional Guardians resulting in this disciplinary proceeding before the Board. This Agreement is a resolution of this disciplinary proceeding and shall become effective after all parties have signed the Agreement. The Agreement will be part of the permanent professional guardian licensing records of LA+ and will be a public record and subject to public access. This Agreement will be posted on the Board's website, which is maintained by the Administrative Office of the Courts.

1. JURISDICTION

1.1 At all times relevant herein, LA+ was a certified professional guardian agency (CPGA) pursuant to General Rule of Court (GR) 23, CPGA #5216.¹

2. STATEMENT OF FACTS

2.1 On or about May 7, 2004, the Board opened a grievance, 2004-004, based on a referral from King County Superior Court. The grievant notified the Board that LA+ had disclosed to the court that the former chief financial officer had unilaterally pre-paid agency expenses on an accrual basis, using fiduciary funds. There was a temporary deficit of \$152,000 which had been paid down to \$116,971. The second issue that LA+ disclosed to the court was regarding the use of pooled accounts and a time table for transitioning to individualized accounts.

2.2 The Board opened a second grievance, 2005-014, based on a referral from King County Superior Court on December 12, 2005. The second grievance alleged that LA+ was at financial risk of losing its offices and was in debt to the landlord for unpaid rent of about \$40,000.

2.3 Pursuant to the Disciplinary Regulations for Certified Professional Guardians (DR), the 2004-004 grievance was investigated by a Review Panel appointed by the Board's Chair. The 2005-014 grievance was later added to the Review Panel's investigation. The Review Panel recommended that the Board enter into a disciplinary settlement agreement with LA+ in resolution of the grievances. On May 12, 2008, the Board rejected the Panel's proposed Disciplinary Settlement Agreement as written, but indicated that the Board would accept a

¹ At all times relevant to PGB No. 2004-004, the two agency designated guardians for LA+ were Executive Director for LA+, Elizabeth Lindley, CPG #5216, and Lynne Darnell, CPG #10001. While consideration of grievance 2004-004 was pending, Ms. Darnell voluntarily surrendered her certification and the Board approved it on May 9, 2005. Any allegations in this matter that relate to Ms. Lindley's certification as a professional guardian will be resolved in a separate proceeding under PGB Nos. 2004-004B and 2005-014B.

1 settlement agreement in resolution of this matter in regards to the agency if certain modifications
2 and additional terms were added to the agreement.²

3 **2.4** On June 10, 2004, King County Superior Court appointed a Special Representative under
4 RCW 11.96A to represent the interests of individuals having trusts or guardianships managed by
5 LA+. The court made the appointment after the "reportable condition" that was noted in LA+'s
6 audit for 2002 which discovered certain potentially illegal transfers from the custodial cash
7 account (the fiduciary account) to the agency cash account. Paulette Peterson, the Special
8 Representative, was directed to create a report on the following issues:

- 9 a. A detailed timeline of events which occurred at LA+ with regard to client funds
10 invested in consolidated fiduciary accounts and a concise description of the events
11 that transpired regarding use of the funds in the consolidated account to pay
12 agency expenses, which led to the discovery of the "reportable condition", and a
13 timeline of events that followed the discovery;
- 14 b. Whether a pooled or consolidated account was used for such individual's assets;
- 15 c. Whether financial reports in guardianship and/or trust cases presented for court
16 approval in King County, after the discovery of shortages, included appropriate
17 disclosures by LA+ and/or lawyers representing it;
- 18 d. Whether any financial reports in either guardianships or trusts which were
19 approved by the court after the shortages were discovered should be amended to
20 provide a report on the shortages;
- 21 e. Whether all parties and persons requesting special notice of proceedings or who
22 would otherwise be entitled to notice were notified of the effect of the shortages
23 in the respective individual guardianships or trust;
- 24 f. Whether LA+ discovered the shortages in a timely manner;
- 25 g. When the court was first advised of the shortages in the consolidated fiduciary
account;
- h. Whether appropriate notification was provided to the Certified Professional
Guardian Board;

² The Disciplinary Settlement Agreement that was rejected by the Board on May 12, 2008, included the Executive Director of LA+, Elizabeth Lindley, CPG #5216. The Board directed that the disciplinary matter regarding Elizabeth Lindley be referred to the Attorney General to file a complaint.

- i. Whether appropriate notification was provided to United Way;
- j. The ability of LA+ to meet the financial burden of the discovered shortage and the amount of time reasonably necessary to rectify the shortages;
- k. The effect such shortage has upon the clients;
- l. How the shortages should be reported;
- m. Whether any liability insurance applies to the events in question;
- n. Whether there is any civil liability for the events in question;
- o. Whether appropriate board of director oversight existed;
- p. The response of the board of directors;
- q. Whether any officer or director liability exists;
- r. Whether referral to any law enforcement agency is appropriate; and
- s. Whether LA+ has instituted appropriate procedures to prevent future recurrences.

2.5 Ms. Peterson filed her report on May 10, 2005. Ms. Peterson reported that the agency complied with her requests for information and cooperated fully. Ms. Peterson summarized her findings as follows:

- a. Harm to Individual Clients. No individual client of LA+ appears to have suffered any losses as a result of the "reportable condition" discovered in the 2002 audit.
- b. Individual Accounts. LA+ transferred each client's funds from the consolidated fiduciary account to an individual account. The fiduciary account was made whole with a one-time payment plus interest. The interest was properly apportioned among all clients prior to transfer to individual accounts.
- c. Knowledge of the Agency. The Executive Director, Ms. Lindley, either knew or should have known no later than February 2003 that transfers were being made from the fiduciary account to the agency account. A line item was specifically created in the agency's software to track these transfers. The line item appeared as a liability entitled "advance fees". Ms. Lindley authorized and signed large checks for payments from the fiduciary account to the agency account which were categorized as "advanced fees". One such transfer in the amount of \$60,000.00 occurred in February 2003. The accompanying email, requesting the transfer, was sent to Ms.

1 Lindley at the time. If Ms. Lindley did not know, she should have known of the
2 problem given the information that she had available to her.

3 **2.6** On September 12, 2005, the Superior Court of King County issued an order approving
4 Ms. Peterson's report and made the following findings of fact:

- 5 a. All accountings presented and approved by the Court were appropriate;
- 6 b. That no particular accounting needs to be amended;
- 7 c. That LA+ should have discovered the inappropriate transfers sooner;
- 8 d. That notice to United Way was appropriate;
- 9 e. LA+ has fully repaid the fiduciary account with interest;
- 10 f. All LA+ clients now have separate accounts;
- 11 g. Liability insurance is inapplicable;
- 12 h. There is no civil liability of the agency;
- 13 i. That prior Board of Director oversight was inadequate;
- 14 j. That no civil liability of any board member or director exists;
- 15 k. That no criminal liability exists; and
- 16 l. That LA+ has instituted appropriate procedures to prevent future reoccurrences.

17 **2.7** On September 12, 2005, the court ordered that any limitations on the authority or ability
18 of LA+ to accept or administer new cases was lifted and the agency could accept or administer
19 new cases. LA+ had agreed to accept the sanction of a reprimand from the Board and has
20 refrained from taking any new cases.

21 **2.8** LA+ has incurred certain fees and costs in responding to the court and to the Board.
22 These allegedly include:

- 23 a. Guardian ad Litem fees for the court ordered investigation--\$16,189.00;
- 24 b. Guardian ad Litem accountant fees--\$2,500.00;
- 25

- c. Legal fees for counsel--\$22,101.00;
- d. Increased audit fees to incorporate Board requested areas--\$7,700.00;
- e. Board requested procedures review costs--\$3,557.00;
- f. Time spent by the Executive Director and staff members of LA+ in responding to Guardian ad Litem and Board--\$51,523.00; and
- g. Loss of new guardianship business due to refraining from taking on new guardianships--\$200,000.00 (approximate).

3. VIOLATIONS

3.1 Based on the facts set forth in paragraphs 1.1 through 1.7, LA+'s conduct constitutes violation of SOP 401.1, SOP 401.2, SOP 401.3, SOP 401.4, SOP 401.5, SOP 403, SOP 403.3, SOP 406, SOP 406.1, SOP 406.3, SOP 406.9, and SOP 406.10, which provide in pertinent part:

SOP 401.1 Failure to be familiar with RCW 11.88, RCW 11.92, GR 23, the Standards of Practice and any other regulations or statutes which govern the conduct of the guardian in the management of affairs of an IP. Failure to seek timely direction from the court. Failure to disclose to the court any conflict between a court order in a specific case and regulations.

SOP 401.2 Failure to seek legal advice as necessary to know how the law applies to specific decisions.

SOP 401.3 Failure to provide reports and accountings that are timely, complete, accurate, understandable, and in a form acceptable to the court.

SOP 401.4 Acting outside the authority granted by the court.

SOP 401.5 Failure to protect the personal and economic interests of the IP and to foster growth, independence, and self-reliance.

SOP 403 Failure to exhibit the highest degree of trust, loyalty, attentiveness, and fidelity in relation to the incapacitated person.

SOP 403.3 Failure to ensure that all compensation for the services of the guardian are documented, reasonable in amount, and incurred for the IP's welfare. The guardian's paying or advancing him or herself fees or expenses except as approved by the court.

SOP 406 Failure to competently manage the property and income of the incapacitated person's estate. Failure to exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence and avoid any self-interest.

SOP 406.1 Lack of knowledge re laws related to managing an IP's estate and/or failure to hire competent professionals to ensure compliance with all statutes and regulations relating the management of funds.

SOP 406.3 Failure to manage estate with primary goal of providing for IP.

SOP 406.9 Failure to avoid self interest or the appearance of self-interest in the management of the IP's estate.

SOP 406.10 Failure to receive court authority to consolidate client accounts. Failure to keep IP funds separate from funds of guardian or staff.

3.2 Based on the facts and violations set forth above, LA+'s conduct constitutes grounds for discipline pursuant to General Rule (GR) 23(c)(2)(viii) and Disciplinary Regulation (DR) 503, which provide in pertinent part:

GR 23 Rule for Certifying Professional Guardians – Certified Professional Guardian Board

...
(2) Duties and Powers.

...
(viii) Grievances and Discipline. The Board shall adopt and implement procedures to review any allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, or regulation. The Board may impose sanctions upon a finding of violation. Sanctions may include decertification or lesser remedies or actions designed to ensure compliance with duties, standards, and requirements for professional guardians.

DR 503 A professional guardian may be subject to disciplinary action for any of the following:

DR 503.1 Violation of or noncompliance with applicable statutes, court orders, court rules, or other authority.

DR 503.3 Failure to perform any duty one is obligated to perform as a professional guardian.

DR 503.4 Violation of the oath, duties, or standards of practice of a professional guardian.

1 3.3 The Board makes no finding regarding whether LA+ has any criminal or civil liability for
2 its conduct in this matter.

3 4. AGGRAVATING AND MITIGATING FACTORS

4 4.1 **Mitigating factors.** The Board recognizes that LA+ has taken steps to correct the
5 circumstances that led to the grievances. LA+ has resolved its financial problems, reduced its
6 pro bono case load, created better accounting procedures, and paid back with interest the money
7 that was improperly transferred. The Board acknowledges that no individual client appears to
8 have suffered any financial losses as a result of the improper transfers.

9 4.2 **Aggravating Factors:** Adverse impact on the reputation of CPGs and the potential for
10 causing public mistrust of the profession, appearance of self-dealing, one or more violations
11 involving more than one IP, number of IPs at risk of harm.

12 5. NO RECORD OF PRIOR DISCIPLINE

13 LA+ has no prior record of discipline with the Board.

14 6. DISCIPLINARY SANCTIONS IMPOSED BY THE BOARD

15 The Board imposes the following disciplinary sanctions and remedies on LA+ for the
16 conduct and violations described in this Agreement. Pursuant to DR 515.1, any disciplinary
17 sanction or remedy imposed by the Board on a certified guardian agency is a disciplinary
18 sanction.

19 6.1 **Letter of Reprimand.** LA+ shall receive a letter of reprimand as a disciplinary sanction
20 for the conduct described in this Agreement. A letter of reprimand is generally appropriate when
21 a guardian negligently engages in professional misconduct incompatible with the Standards of
22 Practice and causes injury to a party, the public, or the legal system, or causes interference with a
23 legal proceeding.
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1 This Agreement constitutes the letter of reprimand and shall be placed in the Board's
2 permanent disciplinary files for LA+.

3 **6.2 Submission of Audit.** LA+ agrees to instruct its auditor, Jacobson, Jarvis & Company,
4 PLLC, to send a copy of the LA+ annual audits to the Board for a period of 5 years, beginning in
5 2008 and ending in 2012. These audits shall be public records, open to public access and
6 disclosure upon a public record request.

7 **6.3 Consolidation of Accounts:** LA+ shall not maintain client funds in consolidated
8 accounts without seeking court approval and authorization.

9 **6.4 Costs.** LA+ shall be liable for the payment of the investigative costs of the Board in this
10 matter, in the amount of \$173.10. Such costs shall be paid within 30 days of the date this
11 Agreement is approved by the Board and shall be paid to the Board through AOC.

12 **6.5** The Board hereby lifts the suspension of the guardian's ability to accept new cases.
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14 **7. VIOLATION OF AGREEMENT**

15 **7.1** Failure to comply with the terms of this Agreement shall constitute addition grounds for
16 discipline pursuant to DR 514.4. Failure to comply includes failure to submit audits, failure to
17 seek court authorization and approval prior to consolidating any client funds, and failure to pay
18 costs.

19 **7.2** In the event of an alleged violation of this Agreement, the Board shall provide notice to
20 LA+ alleged to be in violation of the Agreement, and LA+ shall have 14 days to respond to the
21 allegations.

22 **7.3** If the Board finds that this Agreement has been breached, the Board may pursue
23 disciplinary action, including Suspension Pending Disciplinary Proceedings pursuant to
24 Disciplinary Regulation 519, against LA+ for violation of this Agreement. The Board may also
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1 recover its actual fees and costs for any disciplinary action as a result of a breach by LA+
2 including, but not limited to fees and costs of the guardian investigator, fees and costs of the
3 AAG, fees and costs of the hearing officer.

4 **7.4** This Agreement is binding as a statement of all known facts relating to the conduct of
5 LA+, but any additional existing facts may be proven in any subsequent disciplinary proceeding.

6 **7.5** This Agreement does not preclude the Board from taking any action against any certified
7 professional guardian working for, employed by, affiliated with or otherwise connected to LA+,
8 on issues arising out of the facts stated in Section 2 above.

9 **8. NOTICE**

10 **8.1** This Agreement shall be retained by the AOC in LA+'s disciplinary file.

11 **8.2** This Agreement is a public record, shall be open to public access and disclosure, and will
12 be posted on the Administrative Office of the Courts (AOC) website for the Certified
13 Professional Guardian Program (http://www.courts.wa.gov/programs_orgs/guardian/).

14 **8.3** Notice of the discipline imposed shall be sent to all superior courts pursuant to DR
15 514.3.2.
16

17 **9. ENTIRE AGREEMENT**

18 This Agreement comprises the entire agreement of the parties with respect to the matters
19 covered herein, and no other agreement, statement, or promise made by any party which is not
20 included herein shall be binding or valid. This Agreement may be modified or amended only by
21 a written amendment signed by all parties.
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10. SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision of this Agreement is illegal or invalid for any reason, the remainder of the Agreement will not be affected.

11. LAWS GOVERNING

This Agreement shall be governed by the laws of the State of Washington, and any question arising from the Agreement shall be construed or determined according to such law.

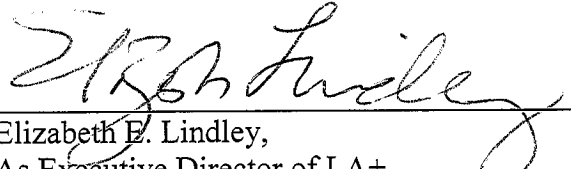
12. RIGHT TO COUNSEL

LA+ acknowledges that it has the right to counsel for representation in this disciplinary matter, at its own expense, as set forth in Disciplinary Regulation 508. LA+ acknowledges that it has chosen to consult with counsel.

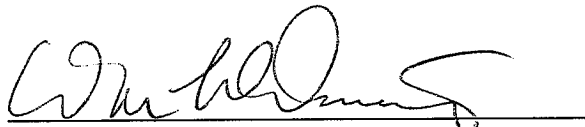
13. PRESENTATION OF AGREEMENT TO THE BOARD

LA+ understands that this Agreement is not binding unless and until it is approved and signed by the Board. If the Board rejects this Agreement, LA+ waives any objection to the participation in the final determination of this matter of any Board member who heard the Agreement presentation.

COPY RECEIVED, NOTICE OF PRESENTATION WAIVED:


Elizabeth E. Lindley,
As Executive Director of LA+

7/21/08
Date


William Dussault,
Attorney for LA+
WSBA #4611

7/22/08
Date

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2 **APPROVED AND ORDERED BY THE CERTIFIED PROFESSIONAL GUARDIAN**
3 **BOARD THIS**

4 4 DAY OF August, 2008.

5
6 Marywave Van Deren

7 Hon. Marywave Van Deren

8 Chair, Certified Professional Guardian Board
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